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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,162	12/31/2003	Misao Shiina	Q79094	6962
23373	7590	03/31/2008	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			NASH, LASHANYA RENEE	
ART UNIT	PAPER NUMBER		2153	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,162	<b>Applicant(s)</b> SHIINA, MISAO
	<b>Examiner</b> LASHANYA R. NASH	<b>Art Unit</b> 2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 31 December 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1448)  
Paper No(s)/Mail Date 1/24/08, 1/10/06, 12/31/03

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

This Office action is in response to the papers filed 31 December 2003. Claims 1-19 are presented for further consideration.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statement filed 10 January 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a written English language translation of a non-English language document, or portion thereof has not been provided. It has been placed in the application file, but the information referred to therein has not been considered as to the merits.

### ***Specification***

Examiner notes that Applicant's specification includes a section with an improper heading "Brief Description of the Invention" (see Specification, page 1). The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### ***Arrangement of the Specification***

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a program itself, without a machine programmed to operate in accordance with the program nor a manufacture structurally and functionally interconnected with the program in a manner

which enables the program to act as a computer component and realize the functionality. Therefore the aforementioned claims are considered software *per se*, and fail to fall within a statutory category of invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Garcia-Luna-Aceves et al (US Patent Application Publication 2003/0101278), hereinafter referred to as Garcia-Luna-Aceves, as set forth below in the Office action.**

In reference to claim 1, Garcia-Luna-Aceves discloses a router employed for directing clients to optimal servers in computer networks (abstract). Garcia-Luna-Aceves further discloses:

- An IP router (i.e. web router; Figure 2-item 202; paragraph [0072], lines 1-6) including an IP(Internet Protocol) routing table which stores routing information (paragraph [0050], lines 1-17; paragraph [0075], lines 4-18) for connecting a plurality of client devices (i.e. client; Figure 2-item 110) with

an original server (i.e. content server; Figure 2-item 210) which is at least an origin of supplying a content and with a plurality of mirror servers (i.e. web caches; Figure 2-item 208) into which the content supplied from the original server is copied (i.e. content at content server is replicated at web caches; paragraph [0068], lines 1-7; paragraph [0079], lines 11-17), the IP router comprising:

- means for ending a connection relating to a packet output from a specific port of the client device and obtaining request information of a content requested by the client device (i.e. router receives request packets from clients for forwarding; paragraph [0006], lines 1-12; paragraph [0082], lines 1-13);
- means for selecting an optimum server for the request information (i.e. optimal server selected; paragraph [0069], lines 1-6) based on information which is to be an index for selecting an optimum server (i.e. metrics associated with route mappings; paragraph [0048], lines 1-5; paragraph [0052], lines 1-8; paragraph [0073], lines 8-18) if the obtained request information corresponds to the plurality of mirror servers (i.e. requested URL for content supplied by web caches and content server; paragraph [0086], lines 1-6 or client serviced by web caches and content server; paragraph [0087], lines 1-8) and based on the routing information (i.e. paragraph [0073], lines 13-18; )

- means for obtaining the content by connecting with the optimum server selected and means for transferring the obtained content to the client device (paragraph [0086], lines 1-15; paragraph [0088], lines 1-19).

In reference to claim 7, Garcia-Luna-Aceves discloses a router employed for directing clients to optimal servers in computer networks (abstract). Garcia-Luna-Aceves further discloses:

- A communication system (Figure 2) comprising:
- a plurality of client devices (i.e. client; Figure 2-item 110; paragraph [0078], lines 10-19);
- an original server (i.e. content server; Figure 2-item 210) which at least serves as an origin of supplying a content (paragraph [0079], lines 11-15);
- a plurality of mirror servers (i.e. web caches; Figure 2-item 208) which copy and hold the content supplied from the original server (i.e. content at content server is replicated at web caches; paragraph [0068], lines 1-7; paragraph [0079], lines 16-17); and
- an IP(Internet Protocol) router (i.e. web router; Figure 2-item 202) for connecting the plurality of client devices with the original server and the plurality of mirror servers over a network; (paragraph [0072], lines 1-6);
- wherein the IP router includes an IP(Internet Protocol) routing table for storing routing information (paragraph [0050], lines 1-17; paragraph [0075], lines 4-18), and comprises:

- means for ending a connection relating to a packet output from a specific port of the client device and obtaining request information of a content requested by the client device (i.e. router receives request packets from clients for forwarding; paragraph [0006], lines 1-12; paragraph [0082], lines 1-13);
- means for selecting an optimum server for the request information (i.e. optimal server selected; paragraph [0069], lines 1-6) based on information which is to be an index for selecting an optimum server (i.e. metrics associated with route mappings; paragraph [0048], lines 1-5; paragraph [0052], lines 1-8; paragraph [0073], lines 8-18) if the obtained request information corresponds to the plurality of mirror servers (i.e. requested URL for content supplied by web caches and content server; paragraph [0086], lines 1-6 or client serviced by web caches and content server; paragraph [0087], lines 1-8) and based on the routing information (i.e. paragraph [0073], lines 13-18; )
- means for obtaining the content by connecting with the optimum server selected (paragraph [0086], lines 1-15; paragraph [0088], lines 1-19).

In reference to claims 13 and 18, Garcia-Luna-Aceves discloses a method [claim 13] (paragraph [0069], lines 1-3) and associated computer software [claim 18] (paragraph [0047], lines 9-10) employed for directing clients to optimal servers in computer networks (abstract). Garcia-Luna-Aceves further discloses:

- A band setting method of an IP router (i.e. web router; Figure 2-item 202) for setting a band (paragraph [0072], lines 1-6' paragraph [0073], lines 1-13) when connecting a plurality of client devices (i.e. client; Figure 2-item 110) with an original server (i.e. content server; Figure 2-item 210) which is at least an origin of supplying a content and with a plurality of mirror servers (i.e. web caches; Figure 2-item 208) into which the content supplied from the original server is copied (i.e. content at content server is replicated at web caches; paragraph [0068], lines 1-7; paragraph [0079], lines 11-17), the IP router comprising:
  - ending a connection relating to a packet output from a specific port of the client device and obtaining request information of a content requested by the client device (i.e. router receives request packets from clients for forwarding; paragraph [0006], lines 1-12; paragraph [0082], lines 1-13);
  - selecting an optimum server for the request information (i.e. optimal server selected; paragraph [0069], lines 1-6) based on information which is to be an index for selecting an optimum server (i.e. metrics associated with route mappings; paragraph [0048], lines 1-5; paragraph [0052], lines 1-8; paragraph [0073], lines 8-18) if the obtained request information corresponds to the plurality of mirror servers (i.e. requested URL for content supplied by web caches and content server; paragraph [0086], lines 1-6 or client serviced by web caches and content server; paragraph

[0087], lines 1-8) and based on the routing information (i.e. paragraph [0073], lines 13-18; )

- obtaining the content by connecting with the optimum server selected and transferring the obtained content to the client device (paragraph [0086], lines 1-15; paragraph [0088], lines 1-19);
- detecting, from a change in the contents of the IP routing table, that a network topology has been changed (paragraph [0073], lines 13-18);
- altering a selection criteria of the optimum server (i.e. updating tables) based on a result of detecting that the network topology has been changed (paragraph [0049], lines 1-12; paragraph [0053], lines 1-9); and
- altering a band setting (i.e. bandwidth; paragraph [0073], lines 8-13) for each service class according to a traffic change accompanying an alteration of the selection criteria (paragraph [0076], lines 1-9).

In reference to claims 2 and 19, Garcia-Luna-Aceves discloses a means for detecting, from a change in the contents of the IP routing table, that a network topology has been changed (paragraph [0073], lines 13-18); a means for altering a selection criteria of the optimum server (i.e. updating tables) based on a result of detecting that the network topology has been changed (paragraph [0049], lines 1-12; paragraph [0053], lines 1-9); and a means for altering a band setting (i.e. bandwidth; paragraph [0073], lines 8-13) for each service class according to a traffic change accompanying an alteration of the selection criteria (paragraph [0076], lines 1-9).

In reference to claims 3, 9 and 14 Garcia-Luna-Aceves discloses wherein the information to be an index for selecting the optimum server is at least one of: information for driving/stopping state per server, RTT(Round-Trip Time) information, or throughput information (paragraph [0073], lines 8-18).

In reference to claims 4, 10, and 15 Garcia-Luna-Aceves discloses wherein the means for selecting an optimum server selects the optimum server by additionally considering a past access track record (paragraph [0086], lines 1-15).

In reference to claims 5, 11 and 12 Garcia-Luna-Aceves discloses wherein a health check for obtaining information (i.e. validity), per server, which is to be an index for selecting the optimum server is performed when a change in contents of the IP routing table is recognized (paragraph [0129], lines 1-6).

In reference to claims 6, 12, and 17 Garcia-Luna-Aceves discloses means for monitoring a changing situation of the traffic for a predetermined certain period of time (paragraph [0039], lines 5-11), wherein the means for altering the band setting alters the band setting for each service class by using a result of monitoring the changing situation of the traffic, performed by the means, as a trigger (paragraph [0073], lines 8-18).

In reference to claim 8, Garcia-Luna-Aceves discloses a means for transferring the obtained content to the client device (paragraph [0086], lines 1-15; paragraph [0088], lines 1-19); a means for detecting, from a change in the contents of the IP routing table, that a network topology has been changed (paragraph [0073], lines 13-18); altering a selection criteria of the optimum server (i.e. updating tables) based on a result of detecting that the network topology has been changed (paragraph [0049], lines 1-12; paragraph [0053], lines 1-9); and altering a band setting (i.e. bandwidth; paragraph [0073], lines 8-13) for each service class according to a traffic change accompanying an alteration of the selection criteria (paragraph [0076], lines 1-9).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LASHANYA R. NASH whose telephone number is (571)272-3957. The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LaShanya R Nash/  
Examiner, Art Unit 2153  
March 20, 2008

/Glenton B. Burgess/  
Supervisory Patent Examiner, Art  
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